~~Indicates Matter Stricken~~

Indicates New Matter

AMENDED

May 20, 2015

**S. 268**

Introduced by Senators L. Martin and Campsen

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Read the first time April 30, 2015.

**A** **BILL**

TO AMEND SECTION 14‑7‑1630, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE JURISDICTION OF STATE GRAND JURIES, TO AMEND SECTION 14‑7‑1650, AS AMENDED, RELATING TO THE DUTIES AND OBLIGATIONS OF THE ATTORNEY GENERAL REGARDING THE STATE GRAND JURY SYSTEM, TO AMEND SECTION 14‑7‑1660, AS AMENDED, RELATING TO THE SELECTION OF GRAND JURORS, TO AMEND SECTION 14‑7‑1690, AS AMENDED, RELATING TO THE GRAND JURY’S AREAS OF INQUIRY AND RELATED PROCEDURES, TO AMEND SECTION 14-7-1720, AS AMENDED, RELATING TO SECRECY OF GRAND JURY PROCEEDINGS, AND TO AMEND SECTION 14‑7‑1730, AS AMENDED, RELATING TO JURISDICTION OF PRESIDING JUDGES OF STATE GRAND JURIES, ALL SO AS TO REVISE PROCEDURES REGARDING THE STATE GRAND JURY SYSTEM RELATING TO NOTIFICATION PROCEDURES WHEN A STATE GRAND JURY IS IMPANELED, COMMUNICATIONS BETWEEN THE PRESIDING JUDGE AND THE ATTORNEY GENERAL INCLUDING APPELLATE REVIEW OF A JUDGE’S REFUSAL TO IMPANEL A STATE GRAND JURY, AMONG OTHER THINGS, TO PROVIDE A PROCEDURE WHEN A CONFLICT OF INTEREST ARISES INVOLVING THE ATTORNEY GENERAL RELATED TO THE GRAND JURY PROCESS, TO PROVIDE PROCEDURES RELATED TO SECRECY OF CERTAIN GRAND JURY PROCEEDINGS, AND TO MAKE OTHER NECESSARY TECHNICAL CHANGES.

Amend Title To Conform

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Sections 14‑7‑1630(B)-(G) of the 1976 Code is amended to read:

“(B) ~~Whenever~~ When the Attorney General and the Chief of the South Carolina Law Enforcement Division consider ~~it~~ a state grand jury necessary ~~and normal~~ to enhance the effectiveness of investigative or prosecutorial procedures ~~are not adequate~~, the Attorney General may ~~petition~~ notify in writing to the chief administrative judge ~~of~~ for general sessions in the judicial circuit in which he seeks to impanel a state grand jury ~~for an order impaneling~~ that a state grand jury investigation is being initiated. This judge is referred to in this article as the ~~impaneling~~ presiding judge. The ~~petition~~ notification must allege the type of offenses to be inquired into and, in the case of those offenses contained in subsection (A)(1), must allege that these offenses may be of a multi‑county nature or have transpired or are transpiring or have significance in more than one county of the State. The ~~petition~~ notification in all instances must specify that the public interest is served by the impanelment.

(C) In all investigations of crimes specified in subsection (A)~~(9)~~(12), except in matters where the Department of Health and Environmental Control or its officers or employees are the subjects of the investigation, the Commissioner of the Department of Health and Environmental Control must consult with and, after investigation, provide a formal written recommendation to the Attorney General and the Chief of the South Carolina Law Enforcement Division. The Attorney General and the Chief of the South Carolina Law Enforcement Division must consider the impaneling of a state grand jury necessary and the commissioner must sign a written recommendation before the Attorney General ~~presents a petition, which includes the commissioner’s written recommendation, to~~ notifies the chief administrative judge pursuant to Section 14‑7‑1630(B).

(1) In the case of evidence brought to the attention of the Attorney General, the Chief of the South Carolina Law Enforcement Division, or the Department of Health and Environmental Control by an employee or former employee of the alleged violating entity, there also must be separate, credible evidence of the violation in addition to the testimony or documents provided by the employee or former employee of the alleged violating entity.

(2) When an individual employee performs a criminal violation of the environmental laws that results in actual and substantial harm pursuant to subsection (A)~~(9)~~(12) and which prompts an investigation authorized by this article, only the individual employee is subject to the investigation unless or until there is separate, credible evidence that the individual’s employer knew of, concealed, directed, or condoned the employee’s action.

(D) If the notification properly alleges inquiry into crimes within the jurisdiction of the State Grand Jury and the notification is otherwise in order pursuant to the requirements of this section, the ~~impaneling~~ presiding judge~~, after due consideration of the petition, may order the impanelment of~~ must impanel a state grand jury. State grand juries are impaneled ~~in accordance with the petition~~ for a term of twelve calendar months. Upon ~~petition~~ the request by the Attorney General, the then chief administrative judge ~~of~~ for general sessions in the judicial circuit in which a state grand jury was impaneled, by order, ~~may~~ must extend the term of that state grand jury for a period of six months but the term of that state grand jury, including an extension of the term, ~~shall~~ must not exceed two years. If at the conclusion of a state grand jury’s term a particular investigation is not completed, the Attorney General may notify the presiding judge in writing that the investigation is being transferred to the subsequently impaneled state grand jury.

A decision by the presiding judge not to impanel a state grand jury after notification by the Attorney General may be appealed to the Supreme Court and shall be handled in an expedited fashion.

(E) The chief administrative judge of the circuit wherein a state grand jury is sitting shall preside over that state grand jury during his tenure as chief administrative judge. The successor chief administrative judge shall assume all duties and responsibilities with regard to a state grand jury impaneled before his term including, but not limited to, presiding over the state grand jury and ruling on petitions to extend its term. ~~This judge is referred to in this article as the presiding judge.~~

(F) Upon the request of the Attorney General, the presiding judge may discharge a state grand jury prior to the end of its original term or an extension of the term~~, upon a determination that its business has been completed or upon the request of the Attorney General~~.

(G) ~~If, at any time within the original term of a state grand jury or an extension of the term, the presiding judge determines that the state grand jury is not conducting investigative activity within its jurisdiction or proper investigative activity, the presiding judge may limit the investigation so that the investigation conforms with the jurisdiction of the state grand jury and existing law or he may discharge the state grand jury.~~ An order ~~issued pursuant to this subsection~~ limiting or ending a state grand jury investigation shall only be granted upon a finding of arbitrary action, compelling circumstances, or serious abuses of law or procedure by or before the state grand jury, and ~~or pursuant to subsection (F)~~ does not become effective less than ten days after the date on which it is issued and actual notice given to the Attorney General and the foreman of the state grand jury, and may be appealed by the Attorney General or the legal advisor to the state grand jury to the Supreme Court. If an appeal from the order is made, the state grand jury, except as is otherwise ordered by the Supreme Court, shall continue to exercise its powers pending disposition of the appeal. Appeals by the Attorney General or the legal advisor to the state grand jury of orders limiting or ending a state grand jury investigation, and appeals from orders granting or denying motions to quash or contempt citations therefrom which are immediately appealable under the law, must be handled by the South Carolina Supreme Court in an expedited fashion.”

SECTION 2. Section 14‑7‑1650 of the 1976 Code, as last amended by Act 335 of 1992, is further amended to read:

“Section 14‑7‑1650. (A) The Attorney General or his designee shall attend sessions of a state grand jury and shall serve as its legal advisor. The Attorney General or his designee shall examine witnesses, present evidence, and draft indictments and reports upon the direction of a state grand jury.

(B) In all investigations of the crimes specified in Section 14‑7‑1630, except in matters where the solicitor(s) or his staff are the subject(s) of such investigation, the Attorney General shall consult with the appropriate solicitor(s) of the jurisdiction(s) where the crime or crimes occurred. After consultation, the Attorney General shall determine whether the investigation should be presented to a county grand jury or whether to ~~petition~~ initiate, under Section 14‑7‑1630(B), ~~for~~ a state grand jury investigation.

(C) ~~Where it is determined that a conflict of interest disqualifies a solicitor or the Attorney General~~ When the Attorney General determines that he should recuse himself from participation in a state grand jury investigation and prosecution, ~~the following shall apply:~~

~~(1)~~ ~~in the case of a solicitor,~~ the Attorney General may either refer the matter to a solicitor for investigation and prosecution, or remove himself entirely from any involvement in the case and designate a prosecutor to assume his functions and duties pursuant to this article. When a solicitor determines that he should recuse himself from participation in a state grand jury matter, the Attorney General shall conduct such investigation and prosecution ~~unless the Attorney General and a solicitor not so disqualified concur in the appointment by the Attorney General of the eligible solicitor as a designee of the Attorney General pursuant to Sections 14‑7‑1650 and 14‑7‑1750;~~ but the Attorney General, in his discretion, may designate another solicitor or appoint a special prosecutor not subject to a conflict to handle or assist him in the state grand jury investigation as the Attorney General deems appropriate.

~~(2)~~ ~~in the case of the Attorney General’s disqualification, the matter shall be referred to a solicitor for investigation and prosecution.~~

~~Any doubt regarding disqualification shall be resolved by the presiding judge of the state grand jury.~~

(D)(1) A hearing on a motion to disqualify the Attorney General or legal advisor for the state grand jury from a state grand jury investigation shall be held in public, however the presiding judge must conduct the hearing in a manner to insure the secrecy and integrity of the investigation. The presiding judge shall protect the identity of the person or persons being investigated to the extent practicable. In order to disqualify the Attorney General or legal advisor for the state grand jury, the presiding judge must find an actual conflict of interest resulting in actual prejudice against the moving party. If the Attorney General or legal advisor for the state grand jury or a member of the staff is disqualified then the Attorney General must refer the matter to a Circuit Solicitor for investigation and prosecution. If a Circuit Solicitor or special prosecutor, or member of their staff, is disqualified, the matter must be referred to the Attorney General’s Office for investigation or prosecution.

(2) An order to disqualify the Attorney General or legal advisor for the state grand jury from a state grand jury investigation, issued prior to the issuance of an indictment or arrest warrant, shall not become effective less than ten days after the date issued and notice is given to the opposing parties unless appealed. If an appeal from the order is made, the state grand jury and the Attorney General or legal advisor for the state grand jury, except as is otherwise ordered by the Supreme Court, shall continue to exercise their powers pending disposition of the appeal. The Supreme Court must handle all appeals from this section in an expedited manner.

(3) The state grand jury may continue with its investigation and the Attorney General or the solicitor or his designee may continue to serve as legal advisor to the state grand jury with all authority, functions, and responsibilities set forth in this article, until the final order becomes effective or upon the issuance of the final order of the Supreme Court if appealed, whichever occurs later.”

SECTION 3. Section 14‑7‑1660 of the 1976 Code, as last amended by Act 335 of 1992, is further amended to read:

“Section 14‑7‑1660. (A) In the January following the effective date of this article and each January thereafter, the jury commissioners for each county shall proceed to draw at random from the jury box the name of one person for each one thousand residents or fraction thereof of the county as determined by the latest United States census but following the effective date of this article, the ~~impaneling~~ presiding judge may authorize an interim procedure for the selection of state grand jurors to constitute the first state grand jury established pursuant to this article. The jury commissioners shall not disqualify or excuse any individual whose name is drawn. When the list is compiled, the clerk of court shall forward the list to the person designated as the clerk of the state grand jury by the ~~impaneling~~ presiding judge. Upon receipt of all the lists from the clerks of court, the clerk of the state grand jury shall draw therefrom at random a list of seven hundred eligible state grand jurors, this list to be known as the master list. The clerk of the state grand jury shall mail to every person whose name is drawn a juror qualification form, the form and the manner of qualifying potential state grand jurors to be determined by the Supreme Court. Based upon these inquiries, the presiding judge shall determine whether an individual is unqualified for, or exempt, or to be excused from jury service. The clerk of the state grand jury shall prepare annually a jury list of persons qualified to serve as state grand jurors, this list to be known as the qualified state grand jury list. No state grand juror may be excused or disqualified except in accordance with existing law.

(B) Upon the ~~impaneling~~ presiding judge ordering a term of a state grand jury ~~on petition of~~ upon notification of initiation of a state grand jury investigation by the Attorney General, the clerk of the state grand jury, upon the random drawing of the names of sixty persons from the qualified jury list, shall summon these individuals to attend the jury selection process for the state grand jury. The jury selection process must be conducted by the presiding judge. The clerk of the state grand jury shall issue his writ of venire facias for these persons, requiring their attendance at the time designated. The writ of venire facias must be delivered immediately to the sheriff of the county where the person resides and served as provided by law. From the sixty persons so summoned, a state grand jury for that term of eighteen persons plus four alternates must be drawn in the same manner as jurors are drawn for service on the county grand jury. Nothing in this section may be construed to limit the right of the Attorney General or his designee to request that a potential state grand juror be excused for cause. Jurors of a state grand jury shall receive a daily subsistence expense equal to the maximum allowable for the Columbia, South Carolina area, by regulation of the Internal Revenue Code when summoned or serving, and also must be paid the same per diem and mileage as are members of state boards, commissions, and committees.”

SECTION 4. Section 14‑7‑1690 of the 1976 Code, as last amended by Act 335 of 1992, is further amended to read:

“Section 14‑7‑1690. Once a state grand jury has entered into a term, the ~~petition and order establishing same may be amended~~ Attorney General or solicitor, in the appropriate case, may notify the presiding judge in writing as often as is necessary and appropriate ~~so as to expand the areas of inquiry authorized by the order~~ that the state grand jury’s areas of inquiry have been expanded or ~~to add~~ additional areas of inquiry have been added thereto. ~~The procedures for amending this authority are the same as those for filing the original petition and order.~~”

SECTION 5. Section 14‑7‑1720 of the 1976 Code, as last amended by Act 335 of 2008, is further amended to read:

“Section 14‑7‑1720. (A) State grand jury proceedings are secret, and a state grand juror shall not disclose the nature or substance of the deliberations or vote of the state grand jury. The only persons who may be present in the state grand jury room when a state grand jury is in session, except for deliberations and voting, are the state grand jurors, the Attorney General or his designee, the court reporter, an interpreter if necessary, and the witness testifying. A state grand juror, the Attorney General or his designee, any interpreter used, the court reporter, and any person to whom disclosure is made pursuant to subsection (B)(2) of this section may not disclose the testimony of a witness examined before a state grand jury or other evidence received by it except when directed by a court for the purpose of:

(1) ascertaining whether it is consistent with the testimony given by the witness before the court in any subsequent criminal proceeding;

(2) determining whether the witness is guilty of perjury;

(3) assisting local, state, other state or federal law enforcement or investigating agencies, including another grand jury, in investigating crimes under their investigative jurisdiction;

(4) providing the defendant the materials to which he is entitled pursuant to Section 14‑7‑1700;

(5) complying with constitutional, statutory, or other legal requirements or to further justice.

If the court orders disclosure of matters occurring before a state grand jury, the disclosure must be made in that manner, at that time, and under those conditions as the court directs. The court must grant a request made by the Attorney General pursuant to this subsection in an expedited manner so as to not interfere with or delay the operation of the state grand jury or its legal advisor when the requested disclosure is authorized by this subsection.

(B) In addition, disclosure of testimony of a witness examined before a state grand jury or other evidence received by it may be made without being directed by a court to:

(1) the Attorney General or his designee for use in the performance of their duties; and

(2) those governmental personnel, including personnel of the State or its political subdivisions, as are considered necessary by the Attorney General or his designee to assist in the performance of their duties to enforce the criminal laws of the State; provided that any person to whom matters are disclosed under this item (2) shall not utilize that state grand jury material for purposes other than assisting the Attorney General or his designee in the performance of their duties to enforce the criminal laws of the State. The Attorney General or his designee promptly shall provide the presiding judge before whom was impaneled the state grand jury whose material has been disclosed, the names of the persons to whom the disclosure has been made, and shall certify that he has advised these persons of their obligation of secrecy under this section.

(C) Nothing in this section affects the attorney‑client relationship. A client has the right to communicate to his attorney any testimony given by the client to a state grand jury, any matters involving the client discussed in the client’s presence before a state grand jury, and evidence involving the client received by or proffered to a state grand jury in the client’s presence.

(D) Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction, must be punished by a fine not exceeding five thousand dollars or by a term of imprisonment not exceeding one year, or both.

(E) State grand jurors, the Attorney General or his designee, the court reporter, any interpreter used, and the clerk of the state grand jury must be sworn to secrecy and also may be punished for criminal contempt for violations of this section. Once he is sworn to secrecy, the clerk of the state grand jury is authorized, only if requested by the Attorney General or his designee, to give the oath of secrecy to members of the Attorney General’s staff; experts or other individuals contracted by the Attorney General or law enforcement for assistance in a state grand jury investigation; federal, state, or local prosecutors and their staff; and federal, state, or local law enforcement officers and their staff. Once he is sworn, the clerk of the state grand jury is authorized at any time to give the oath of secrecy to members of his own staff or to the court reporter.”

SECTION 6. Section 14‑7‑1730 of the 1976 Code, as last amended by Act 335 of 1992, is further amended to read:

“Section 14‑7‑1730. (A) Except for the prosecution of cases arising from indictments issued by the state grand jury, and subject to the provisions and standards provided in Sections 14‑7‑1630 and 14‑7‑1650, the presiding judge has jurisdiction to hear all matters arising from the proceedings of a state grand jury, including, but not limited to, matters relating to the impanelment or removal of state grand jurors, the quashing of subpoenas, the punishment for contempt, and the matter of bail for persons indicted by a state grand jury.

(B) A person indicted by a state grand jury for a bailable offense must have a bond hearing before the end of the second business day following the day he was arrested in the State of South Carolina for that offense or the day he was delivered within the State of South Carolina following extradition for that offense from another State or jurisdiction, and must be released within a reasonable time, not to exceed four hours, after the bond is delivered to the incarcerating facility. If the presiding judge or acting presiding judge is not available, the initial bond hearing following arrest for a state grand jury indictment may be conducted by any circuit judge of competent jurisdiction in the county where the grand jury was impaneled. A ‘business day’ pursuant to this subsection is any day in which the county courthouse is open in the county where the grand jury was impaneled.”

SECTION 7. This act takes effect upon approval by the Governor

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